IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6503 of 1991

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEW PROGRESSIVE EDUCATION TRUST
Versus
STATE OF GUJARAT

Appearance:
MR MUKUND M DESAI for Petitioners
MR P.G.DESAI,GOVT. PLEADER WITH
MISS MANISHA LAVKUMAR for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE C.K.THAKKAR

Date of decision: 17/02/2000

ORAL JUDGEMENT

Per Thakker, J.:

This petition is filed by the petitioners for prayers in terms of para 31 . Said para reads as under :

(a) admit this special civil application;

(b) to issue a writ in the nature of mandamus and/or any other appropriate writ, direction or order against the respondents, quashing and setting aside the Government Resolution dated 25.9.1987, Annexure "B" to this petition as unconstitutional, without jurisdiction, illegal, null and void;

(c) by issuing writ in the nature of mandamus or certiorari or any other appropriate writ,order or direction quashing and setting aside the order and judgment of the Gujarat Primary Education Tribunal dated 28.,2.1991 in application No.1 of 1988 as illegal, vitiated by total non application of mind.,based on extraneous and irrelevant consideration and in disregard of relevant consideration, unreasonable;

(d) to declare section 40 (E) of the Bombay Primary Education Act as ultra vires of the Constitution of India;

(e) to grant such other and further reliefs as are deemed proper."

The matter was placed before the Division Bench in view of a prayer to declare provisions of Section 40E of the Bombay Primary Education Act, 1947 (hereinafter referred to as `Act') as amended by Act 22 of 1986 ultra vires Article 14 of the Constitution.

Section 40E speaks of disputes to be decided by a Tribunal. It reads as under :

"40-E Where there is any dispute between the manager of a recognised private primary school and teacher in service of such school which is connected with the conditions of service of service of such teacher, the manager or, as the case may be, the teacher may make an application

to the Tribunal constituted under section 40F for the decision of the dispute."

No ground whatsoever has been put forward as to why the provisions of Section 40E of the Act can be held to be ultra vires or unconstitutional. Looking to the legislative scheme and particularly provisions inserted by Chapter VII A (Recognition of private primary schools) (Section 40A) and Chapter VII B (Procedure for imposition of penalty on teachers of recognised private primary schools) (Sections 40B to 40H), it is clear that with a view to safeguard interest of teaching and non-teaching staff, the legislature has made certain provisions. One of such provisions is that disputes may be decided by a Tribunal constituted under the Act.

We see no substance in the contention raised by the petitioner how such provision can be said to be ultra vires or unconstitutional. We, therefore, hold that provision cannot be declared ultra vires or unconstitutional. Only on that ground and without observing anything on merits, we dismiss the petition. We may, however, state that as we are not entering into merits of the matter and/or correctness or otherwise of the order which is impugned in the present petition, disposal of this petition will not come in the way of the petitioners in getting appropriate relief , if otherwise, they are entitled in accordance with law. Petition accordingly stands disposed of. Rule discharged. No order as to costs.

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parekh